***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

WRIT PETITION No.1102 of 2007

% 27-02-2007

M/s.Siddhi Vegetable Oil Products, Gaganpahad, Hyderabad, rep. by its Managing Partner, Mr.Surender Kumar Agarwal & another

…Petitioners

and

$ Govt. of A.P., rep. by Inspector General of Stamps & Registration, M.J.Road, Hyderabad & others.

…Respondents

! COUNSEL FOR PETITIONERS: Smt.Dyumani

^ COUNSEL FOR RESPONDENTS: G.P. for Revenue

< Gist:

> Head Note:

? CITATIONS:

1. AIR 1970 SUPREME COURT 659

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 1102 OF 2007

Dated 27th February 2007

Between:

M/s.Siddhi Vegetable Oil Products, Gaganpahad,
Hyderabad, rep. by its Managing Partner,
Mr.Surender Kumar Agarwal & another

…Petitioners

and

Govt. of A.P., rep. by Inspector General of
Stamps & Registration, M.J.Road, Hyderabad
& others.

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 1102 OF 2007

O R D E R:

The 1st petitioner is a partnership firm and the 2nd petitioner is one of the partners. The firm established a Small Scale Industry at Thimmapur village of Kothur Mandal, Mahaboobnagar District, and it was so registered with the Department of Industries. With a view to purchase machinery and construction of buildings and its site, the 1st petitioner approached the 4th respondent bank for sanction of loan of Rs.7,45,00,000/-. After necessary correspondence and verification, the 4th respondent agreed to sanction the loan, subject to the condition that documents for the property of necessary value shall be deposited as security. Documents of different categories, relating to 21 items of properties, were deposited with the 4th respondent on 1.8.2006. On the next day, a Memorandum of Confirmation of deposit of title deeds was executed by the parties. The same was presented for registration

with the 3rd respondent. A Stamp duty of Rs.1,000/- was paid, by claiming the benefit under G.O.Ms.No.316, Revenue (Registration-I) Department, dated 14.3.2006. The 3rd respondent issued notice, dated 30.11.2006, stating that the District Registrar, the 2nd respondent, has clarified that a sum of Rs.22,35,000/- is to be paid under Article 35(b) of the Schedule to Indian Stamp Act, and accordingly, required the petitioners to pay the balance. The same is challenged in this writ petition.

It is contended that the respondents 2 and 3 treated the document as a Mortgage Deed, though what is presented to them is a Memorandum, evidencing deposit of title deeds. According to them, stamp duty payable on such document, under Article 7(a) & (b) of Schedule 1A to Indian Stamp Act, is 0.5% of the total transaction, subject to a maximum of Rs.50,000/-, and in case of small scale industries, the maximum stamp duty is restricted to Rs.1000/-, under G.O.Ms.No.316, dated 14.3.2006.

The 2nd respondent filed a counter affidavit, stating that the document in question answers the description of mortgage deed, and accordingly, the petitioners were required to pay the balance of the stamp duty. It is also contended that the benefit under G.O.Ms.No.316 cannot be extended to the petitioners, since the document is a mortgage deed.

Smt. Dyumani, learned counsel appearing for the petitioners, submits that the document presented to the

3rd respondent is only a Memorandum of Confirmation of deposit of title deeds, and there is absolutely no basis for respondents 2 and 3, in treating it as a Mortgage Deed. She contends that the document, by

itself, did not bring about any transaction of mortgage, and that the actual deposit of title deeds has taken place, much before the memorandum was executed. She contends that the only purpose of seeking registration of the Memorandum is to ensure that the existence of mortgage, *vis-à-vis* the properties covered by the title deeds, is reflected in the register of encumbrances, and nothing more. She places reliance upon the judgment of the Supreme Court in ***D.D. SEAL v. R.L.PHUMRA***[1], and the judgments rendered by certain High Courts, in support of her contention.

Learned Government Pleader for Revenue submits that though the document is titled as Memorandum, in effect and in its purport, it is a deed of mortgage. He contends that the object of the document is to create security, and deposit of title deeds was only incidental.

The Transfer of Property Act provides for mortgages of deferent categories, mentioned in Section 58. One of them is by deposit of title deeds. Section 59 prescribes the manner in which a mortgage is to be created. It reads as under:

> "**Mortgage when to be by assurance**:- Where the principal money secured is one hundred rupees or upwards, a mortgage other than a mortgage by deposit of title-deeds can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.
>
> Where the Principal money secured is less than one hundred rupees, a mortgage may be effected either by a registered instrument signed and attested as aforesaid or except in the case of a simple mortgage by delivery of the property."

From this, it is clear that in case of mortgages by deposit of title deeds, execution of a registered instrument is not necessary. Mere deposit of title deeds would bring about such a transfer.

In the recent past, the instances were on rise, where, even after deposit of title deeds as a security, the mortgagors have transferred the mortgaged properties, suppressing the mortgage. Since the transactions are not registered, the corresponding encumbrance was not reflected against the properties. With a view to overcome this development, and curb the practice, the State of Andhra Pradesh amended Schedule 1A to the Indian Stamp Act, providing for registration of Memorandum, evidencing deposit of title deeds. Stamp duty to be paid thereon is prescribed as 0.5% of the value of the transaction, subject to a maximum of Rs.50,000/-.

On a representation made by the Small Scale Industries, the Government issued G.O.Ms.No.316, Revenue (Registration.I) Department, dated 14.3.2006, reducing the stamp duty chargeable under Article 7(a) & (b) of Schedule 1A, to Rs.1,000/-, in respect of the documents executed by Small Scale Industries.

As mentioned earlier, the petitioner approached the 4th respondent for sanction of loan of Rs.7.5 crores. After processing the application, the 4th respondent sanctioned the same, by insisting on deposit of title deeds. The title deeds were accordingly deposited on 1.8.2006. On the next day, a Memorandum of Confirmation of deposit of title deeds was executed, and it was presented before the 3rd respondent for registration. Stamp duty of Rs.1,000/- was paid thereon. The respondents 2 and 3 treated the document as Mortgage Deed, and demanded the difference of stamp duty of Rs.22,35,000/-.

Substantial difference exists between a Mortgage Deed and a Memorandum of deposit of title deeds. The only common feature in them is that both of them relate to the transactions of mortgage. The distinguishing feature is that the former brings about a transaction of

mortgage by itself, whereas, the latter refers to what has already taken place. In the judgment referred to above, the Supreme Court held that what becomes registerable under law, is a deed and not the transaction. If a transaction cannot exist independent of a deed, the transaction comes to be brought about, by the deed itself. In other words, where a transaction is required to be evidenced through a registered deed, it comes into existence, with the registration, and it does not have an independent existence. Conversely, where a transaction can take place, without any registered document, it comes into existence the moment the necessary ingredients are complied with. If, at a subsequent point of time, any Memorandum or deed, mentioning the transaction is executed, it serves only as a device to instill confidence in the parties. Its registration, or lack of it, would have absolutely no bearing on the transaction, since it has already come into existence.

As pointed out earlier, it is not necessary to execute a registered deed, to bring about a transaction of mortgage by deposit of title deeds. The transaction takes place with the advancement of money and deposit of title deeds. The subsequent execution of a Memorandum, confirming deposit of title deeds is a step, over and above the requirement of the transaction of mortgage of that particular category, and would have no bearing upon the existence of the mortgage. In his counter affidavit, the 2nd respondent pleaded that since the loan was sanctioned, on the basis of deposit of title deeds, and since the transaction is a continuous one, the document must be treated as a mortgage. He does not dispute that the title deeds were already deposited and what is presented before the 3rd respondent is only a Memorandum, evidencing deposit of title deeds.

For the foregoing reasons, the writ petition is allowed, and the impugned notice, dated 30.11.2006, is set aside. Consequently, the 3rd respondent is directed to process the document presented by the petitioners, as the one covered by Article 7 (a) & (b) of Schedule 1A to the Indian Stamp Act, as amended by the State of Andhra Pradesh, read with G.O.Ms.No.316, Revenue (Registration.I) Department, dated 14.3.2006. There shall be no order as to costs.

L.NARASIMHA REDDY, J

Dt. 27th February 2007

Note: L.R.copies be marked.

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[1] AIR 1970 SUPREME COURT 659